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SUPREME COURT OF THE UNITED STATES.

Nos. 423-445, 809, 810.—October Term, 1925.

Frank White, Treasurer of the United States, and Frederick C. Hicks, Alien Property Custodian, Appellants, 423 *vs.* The Mechanics Securities Corporation.	Appeals from the Court of Appeals of the District of Columbia.
The United States of America, Appellant, 424 *vs.* Securities Corporation General.	
Frank White, Treasurer of the United States, and Frederick C. Hicks, Alien Property Custodian, Appellants, 425 *vs.* Securities Corporation General.	
The United States of America, Appellant, 430 *vs.* The Equitable Trust Company of New York	
Frederick C. Hicks, Alien Property Custodian, and Frank White, Treasurer of the United States, Appellants, 431 *vs.* The Equitable Trust Company of New York.	
Frederick C. Hicks, Alien Property Custodian, and Frank White, Treasurer of the United States, Petitioners, 809 *vs.* Mercantile Trust Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
The United States of America, Petitioner, 810 *vs.* Mercantile Trust Company.	

[December 14, 1925.]

Mr. Justice Holmes delivered the opinion of the Court.

The cases numbered from 423 to 445 inclusive are appeals from decrees of the Court of Appeals of the District of Columbia.

They were decided under an opinion reported in 4 Fed. Rep. (2d) 619; No. 423 being disposed of *per curiam,* on the authority of that decision, in 4 Fed. Rep. (2d) 624. The other two cases, numbers 809 and 810, come here on writs of certiorari to the Circuit Court of Appeals for the Eighth Circuit granted last month by this Court after a decree for the plaintiff in the District Court, but before a decision by the Circuit Court of Appeals, in view of the fact that the questions raised had been presented to it by the above mentioned appeals. Judicial Code, § 240, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936.

The suits are bills in equity brought under the Trading with the enemy Act of October 6, 1917, c. 106, § 9, 40 Stat. 411, 419, as amended by the Acts of June 5, 1920, c. 241, 41 Stat. 977, and March 4, 1923, c. 285, 42 Stat. 1511. They are all brought upon notes issued by the Imperial German Government and alleged to have been recognized by the present German Government. They seek to collect the amounts from funds alleged to have belonged to the Imperial Government and now in the hands of the Alien Property Custodian or the Treasurer of the United States under the above mentioned Act. The defences relied upon were: (1) that Germany had an interest in the fund and that the suits required a judgment as to the obligations of a foreign sovereign and that therefore the courts had no jurisdiction; (2) that there was no competent evidence that any funds in the hands of either of the defendants had belonged to the German Government and (3) that the United States had claims against Germany, arising out of the war, in excess of the funds and was entitled to satisfaction from those funds either in preference to other claims or at least on an equal footing with them. The last point is reinforced by a suggestion on behalf of the United States in all the cases except number 423 that it has filed notice of its claim under oath, that the claims other than its own would more than exhaust the funds on hand, that it is entitled to priority, and that the Court should dismiss the other bills and proceed to establish the claims of the United States. The Court of Appeals of the District of Columbia in a careful opinion overruled the defence, dismissed the suggestion and affirmed decrees for the plaintiffs. We are of opinion that its decision and that of the District Court in Missouri were right.

The elaborate argument that was made against the jurisdiction of courts over actions against foreign governments or to examine

the conduct of such governments is beside the mark. In these cases no judgment is asked against Germany or against property that it is entitled to defend. The funds were seized adversely by the United States in time of war. They are in its hands; it has declared by an Act of Congress what shall be done with them, and that is the end of the matter. There is no question that such a seizure and disposition are within its powers. *Brown* v. *United States,* 8 Cranch. 110, 129. *Miller* v. *United States,* 11 Wall. 268. The treaty with Germany has recognized their effect. Article 1 according the rights asserted by the joint resolution of July 2, 1921, § 5, recited in the Treaty, 42 Stat., Part II, 1939. Turning then to the Trading with the enemy Act we find in § 9 express authority to any person not an enemy to maintain bills like the present for satisfaction of debts owing from an enemy, out of the property that has come from such enemy into the Custodian's hands. By § 2 'enemy' as used in the Act is defined and stated to include the government of any nation with which the United States is at war. The jurisdiction is complete unless the suggestion of an adverse interest on the part of the United States should induce a different result.

We will take up the claim of the United States in this connection, as it is the only point that is entitled to any serious consideration. The United States seized the property in question from an enemy and of course could do with it what it liked. When it comes into court and seeks to appropriate it there is a natural notion that it has elected to use its power. Its power could not be denied if the Attorney General were the complete mouthpiece of its will. But whatever his authority it is subordinate to Congress; and Congress has more authentically declared the sovereign intent by the statute to which we have referred. The statute gives an absolute right to the suitor who comes within its terms, unqualified by any reservation of a superior lien in case the United States should be a rival creditor. Even assuming, notwithstanding *Davis* v. *Pringle,* 268 U. S. 315, 318, that the United States is a 'person' given the right to sue by § 9, there is no reservation of priority in the Act, or of a right to intermeddle in the private suit of another, or of any advantage that it might have retained as captor of the fund. Whether from magnanimity or forgetfulness it has assumed the position of a trustee for the benefit of claimants and has renounced the power to assert a claim except on the same footing and in the same way as others if at all. There is no doubt an intermittent

tendency on the part of governments to be a little less grasping than they have been in the past and it may be that the enactment was intended to exhibit the self-denial that whether intended or not was achieved in the bankruptcy act with regard to the priority of liens. *Davis* v. *Pringle*, 268 U. S. 315. There is more reason for it when as here the competition is between claims imposed by reason of success in war, and those arising out of ordinary business transactions of citizens in time of peace.

With regard to the evidence, the contention on behalf of the United States does not seem to us to need more than a word of reply. The facts admitted by answer under oath of the Custodian and the Treasurer in one of the cases were that the Custodian determined after investigation that five hundred and fifteen thousand five hundred and seventy-five dollars were owing to the German Government, that he demanded and received them under the Act, paid them to the Treasurer, and holds them in a special trust; that he afterwards collected and paid over to the Treasurer five million dollars in a special trust as from an unknown enemy, but later determined that two million two hundred thousand dollars of the latter sum were held when he received them for the Imperial German Government, and directed the Treasurer to transfer that amount to a special account to the credit of the Imperial German Government, and that this was done. It was pressed at great length that the Custodian had no authority to determine the fact, especially after the money had been transferred to the Treasurer. But it is immaterial whether he had that authority or not. He had authority to answer in his own case and the admission of the two defendants under oath is evidence against them in other cases as it would be conclusive against them in the one where it was filed, in the absence of any evidence to the contrary. *Pope* v. *Allis*, 115 U. S. 363. No evidence to the contrary was given in any of the cases nor was any reason shown to doubt the fact.

Decrees affirmed.

Mr. Justice STONE took no part in this case.